



Department of Justice

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DEPARTMENT OF JUSTICE AND FEDERAL TRADE COMMISSION ISSUE JOINT ANTITRUST GUIDELINES FOR THE LICENSING OF INTELLECTUAL PROPERTY

WASHINGTON, D.C. -- Recognizing the increasingly important role of intellectual property in U.S. economic growth and competitiveness, the Department of Justice and the Federal Trade Commission (FTC) today jointly issued Antitrust Guidelines for the Licensing of Intellectual Property. They will provide guidance on antitrust issues in the licensing of intellectual property as protected by patent, copyright and trade secret laws. In addition, they address the licensing of know-how.

The guidelines supersede the Department's draft guidelines that were published in the Federal Register for public comment on August 11, 1994. Following a 60-day public comment period, a task force of Department and FTC attorneys and economists reviewed the comments and made appropriate revisions.

The final guidelines clarify the agencies' approach to market definition for technology and innovation markets. They provide additional examples illustrating the application of the guidelines. They explicitly recognize that the principles in these guidelines apply equally to international and domestic intellectual property licensing agreements.

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The guidelines also reaffirm the basic principles contained in both the Department's August draft guidelines and the relevant sections of the Department's 1988 Antitrust Enforcement Guidelines for International Operations that they replace. Among these principles:

- the same antitrust principles apply to intellectual property as apply to other forms of property, with appropriate recognition of the distinguishing characteristics of intellectual property;
- antitrust enforcement should not unnecessarily interfere with the licensing of intellectual property rights; and
- the existence of an intellectual property right does not, by itself, give rise to a presumption of market power.

The guidelines were announced today during a speech by Deputy Assistant Attorney General Richard J. Gilbert before the American Bar Association's Antitrust meeting in Washington.

"These guidelines reaffirm our commitment to provide guidance to the business community and help reduce uncertainty in this vital area of our economy," said Anne K. Bingaman, Assistant Attorney General in charge of the Department's Antitrust Division. "They accomplish this in a clear and forward-looking way."

"We are also extremely pleased that these guidelines represent the fifth set of guidelines that the Department and the FTC have issued jointly over the past three years," Bingaman added.

Other joint guidelines include the 1992 DOJ-FTC Horizontal Merger Guidelines, 1993 and 1994 DOJ-FTC Policy Statements for the Health Care Industry, and 1995 DOJ-FTC Antitrust Enforcement Guidelines for International Operations.

"The intellectual property guidelines will ensure," Bingaman concluded, "that sound antitrust enforcement continues to encourage technological innovation and promote U.S. competition here and abroad. It does so by preventing arrangements that inhibit innovation or restrain competition

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without promoting the development of intellectual property."

Copies of Deputy Assistant Attorney General Gilbert's speech and the 1995 Guidelines for the Licensing of Intellectual Property are available to members of the media in the Justice Department's Public Affairs Office. Others can obtain copies from the Legal Procedure Unit of the Antitrust Division, Room 3235, Department of Justice, Washington, DC 20530 (telephone: 202-514-2481). The guidelines are also available at the FTC's press office.

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